

STATE OF MICHIGAN  
COURT OF APPEALS

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REBECCA LYN CASSIDY,

Plaintiff-Appellant,

v

GREGORY CLARENCE CASSIDY,

Defendant-Appellee.

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UNPUBLISHED

February 27, 2014

No. 313514

Allegan Circuit Court

LC No. 10-047282-DM

Before: SHAPIRO, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Plaintiff, Rebecca Lyn Cassidy, appeals as of right the trial court's judgment of divorce. She specifically argues the trial court awarded an insufficient amount of spousal support and erroneously denied her request for attorney fees. We reverse and remand for further proceedings.

Plaintiff first argues and we agree that the trial court erred by awarding her an insufficient amount of spousal support. We review a trial court's award of spousal support for an abuse of discretion. *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Id.* We review the factual findings on which the trial court based its decision for clear error. *Id.* "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake was made." *Id.* If no clear error can be found, then we must simply decide whether the award was "fair and equitable" in light of the trial court's factual findings. *Id.* The trial court's award must be affirmed unless we are firmly convinced that it was inequitable. *Id.* at 355-356.

"The objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party, and support is to be based on what is just and reasonable under the circumstances of the case." *Woodington*, 288 Mich App at 356, citing *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008). Factors a trial court should consider in determining spousal support include:

- (1) the past relations and conduct of the parties;
- (2) the length of the marriage;
- (3) the abilities of the parties to work;
- (4) the source and amount of property awarded to the parties;
- (5) the parties' ages;
- (6) the abilities of the parties to pay support;
- (7) the present situation of the parties;
- (8) the needs of the parties;
- (9) the parties'

health; (10) the parties' prior standard of living and whether either is responsible for the support of others; (11) the contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. [*Id.*, citing *Berger*, 277 Mich App at 726-727.]

In this case, the trial court made specific findings of fact with respect to a number of the relevant factors listed above. The trial court determined that spousal support was appropriate and awarded plaintiff \$400 per month in support for two years, \$267 per month for the third year, and \$133 per month for the fourth and final year. Aside from her disagreement about defendant's annual income, plaintiff does not challenge any of the trial court's factual findings as being clearly erroneous and does not argue that the trial court ignored relevant factors.

With respect to defendant's income, plaintiff argues that the trial court clearly erred in determining that defendant earned "approximately \$85,000 annually" because the court failed to take into account income earned by defendant from a second job and defendant's receipt of military disability benefits. However, plaintiff herself acknowledged at trial that defendant earned \$85,000 annually through his current employment and that defendant stopped working his second job before the divorce action was filed. We further find that the trial court properly considered defendant's military disability benefits when determining defendant's income.

Notably, for purposes of child and spousal support, § 2 of the Support and Parenting Time Enforcement Act, MCL 552.602(m)(i), defines "income" as "[c]ommissions, earnings, salaries, wages, and other income due or to be due in the future to an individual from his or her employer or a successor employer." In *King v King*, 149 Mich App 495, 499-500; 386 NW2d 562 (1986), this Court held that, under the Uniformed Services Former Spouses' Protection Act, 10 USC § 1401 *et seq.*, a party's military disability pension may not be considered "directly or indirectly" as a marital asset for purposes of property division. Although the decision relates to marital assets, we conclude based on the plain language of MCL 552.602(m)(i) that to consider defendant's military disability pay as a source of income in determining spousal support would be inappropriate and appears to circumvent federal law. Accordingly, we conclude that the trial court did not clearly err in finding defendant's income to be approximately \$85,000 annually.

Notwithstanding that the trial court did not clearly err in its factual findings, we must still determine whether the spousal support award was "fair and equitable" in light of those findings. *Woodington*, 288 Mich App at 355. As previously stated, a trial court's objective in awarding spousal support is to "balance the incomes and needs of the parties in a way that will not impoverish either party." *Id.* at 356. Here, the trial court specifically found that the parties had similar needs, but it then clearly gave insufficient weight to the disparity in their incomes, income earning ability and current situations. Defendant has a decided advantage in education and earns \$85,000 per year. Plaintiff possesses only a high school diploma, is unemployed, has a limited work history and has never earned more than \$20,000 per year. Even without including defendant's military disability benefits, there is a substantial disparity in income while the needs of the parties are similar. And, while plaintiff was awarded an equitable division of the marital assets, it is clear that they have little equity value and appear to be offset by the amount of marital debt. In any event, a party should not have to invade her property for support. *Olson v Olson*, 256 Mich App 619, 632; 671 NW2d 64 (2003). Based on the record, we are firmly

convinced that the trial court's award of spousal support, which will provide plaintiff with a mere \$400 per month for the first two years and decreasing amounts for the two years following, is not "fair and equitable," *Woodington*, 288 Mich App at 355, and the trial court abused its discretion. The award was not within the range of reasonable and principled outcomes where it leaves plaintiff impoverished while defendant has a substantial income. On remand, the trial court should award an increased amount of spousal support that adequately reflects the circumstances of the case.

Plaintiff also argues the trial court erred in rejecting her request for attorney fees. Attorney fees may be awarded in a domestic relations action "when a party needs financial assistance to prosecute or defend the suit." *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005) (citations omitted). MCR 3.206(C) permits the award of attorney fees if the requesting party can show (1) an inability to bear the expense of the action; and (2) the other party is able to pay. MCR 3.206(C)(2)(a). The requesting party must also show that the fees incurred were reasonable. *Reed*, 265 Mich App at 165-166. As with spousal support, we review a trial court's decision to grant or deny a request for attorney fees for an abuse of discretion and the findings of fact on which the decision is based for clear error. *Woodington*, 288 Mich App at 369.

The record in this case reflects that plaintiff incurred approximately \$38,000 in legal fees. She has never earned more than \$20,000 in a single year, has only a high school diploma and is currently unemployed. "A party sufficiently demonstrates an inability to pay attorney fees when that party's yearly income is less than the amount owed in attorney fees." *Loutts v Loutts*, 298 Mich App 21, 24; 826 NW2d 152 (2012) quoting *Myland v Myland*, 290 Mich App 691, 702; 804 NW2d 124 (2010). Moreover, although plaintiff received very minimal spousal support and half of the marital assets, those assets are intended for her support. "[A] party should not be required to invade assets to satisfy attorney fees when the party is relying on the same assets for support." *Woodington*, 288 Mich App at 370, citing *Gates v Gates*, 256 Mich App 420, 438-439; 664 NW2d 231 (2003). The trial court, however, failed to make any factual findings with regard to the attorney fee issues. Instead, it merely declared that an award of attorney fees was not necessary or reasonable. "Without adequate findings of fact, there is no basis for determining whether the trial court's [decision] represented an abuse of discretion." *Woodington*, 288 Mich App at 371. Accordingly, remand is appropriate.

We recognize defendant's argument on appeal that he is unable to pay plaintiff's attorney fees because he incurred substantial fees of his own and is now required to pay child and spousal support. Whether these factors are sufficient to defeat plaintiff's request for attorney fees is not a question we address. Rather, we instruct the trial court on remand to consider all of the factors discussed herein and to make specific factual findings on those issues in support of its decision.

We reverse the trial court's judgment as it pertains to spousal support and attorney fees. We remand to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro  
/s/ Jane E. Markey  
/s/ Cynthia Diane Stephens